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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 CLAUDIA VERONICA GUTIERREZ,  
12 Plaintiff,  
13 v.  
14 CAROLYN W. COLVIN Acting  
15 Commissioner of Social Security,  
16 Defendant.

Case No.: 15-cv-2146 JAH-KSC

**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT [DOC. NO. 14] AND  
GRANTING DEFENDANT'S CROSS-  
MOTION FOR SUMMARY  
JUDGMENT [DOC. NO. 15]**

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18 **INTRODUCTION**

19 Claudia Veronica Gutierrez (“Plaintiff”) filed this action seeking judicial review of  
20 a final decision made by the Commissioner of the Social Security Administration  
21 (“Defendant”) denying Plaintiff’s claim for supplemental security income disability  
22 benefits pursuant to 42 U.S.C. 405(g). After a review of the parties’ submissions, the record  
23 submitted in this matter, and for the reasons set forth below, this Court **DENIES** Plaintiff’s  
24 motion for reversal of the Commissioner’s administrative decision, or in the alternative,  
25 remand for further proceedings and **GRANTS** Defendant’s cross-motion for summary  
26 judgment.

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## **BACKGROUND**

### **I. Procedural Background**

Plaintiff filed an initial claim for disability on March 29, 2012 due to various health conditions including anxiety, agoraphobia with panic attacks, dyslexia, and palpitations. *See* AR<sup>1</sup> at 45. On April 9, 2012, an interviewer spoke with Gutierrez to finalize her application for disability insurance benefits. *See* AR at 145. Plaintiff's claim was initially denied on July 18 2012, and denied again on reconsideration. *See* AR at 68, 78. A hearing before an administrative law judge ("ALJ") was held on March 20, 2014. AR 24 -44. On May 2, 2014, the ALJ issued a decision finding Plaintiff was not disabled under section 1614(a)(3)(A) of the Social Security Act. *See* AR 11-19. Plaintiff's request for Appeal Council review was denied on August 5, 2015. AR 1-4.

Plaintiff commenced this action pursuant to 42 U.S.C. § 405(g) on September 25, 2015. [Doc. No. 1]. Defendant filed an answer on June 20, 2016. [Doc. No. 11]. Thereafter, Plaintiff filed a Motion for Summary Judgment seeking reversal or remand of the Commissioner's decision [doc. no. 14] and Defendant Commissioner filed a Cross-Motion for Summary Judgment [doc. no. 15]. Both motions have been fully briefed. [Doc. Nos. 16, 17].

### **II. Factual Background**

#### **A. Vocational Expert Testimony**

A vocational expert testified at the hearing regarding Plaintiff's future work capabilities, recognizing that Plaintiff had no past relevant work history. *See* AR at 42. The ALJ gave the vocational expert a hypothetical in order to determine whether there were any jobs in the state or national economy for a person such as Plaintiff. The hypothetical given, in relevant part, was as follows:

Assume a person of claimant's age which is now 50 with a 10th grade education, no past relevant work, and the person is illiterate in English, with the following

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<sup>1</sup> AR refers to the administrative record lodged with this Court.

1 additional restrictions: present there are no exertional or postural limitations; there  
2 are mental restrictions of the following: the hypothetical person is able to  
3 understand, remember, and *carry out simple job instructions only*; can only  
4 occasionally relate to coworkers and deal with the public. Occasional is defined as  
very little to one-third of the time. (Emphasis added).

5 *See* AR at 42. The vocational expert identified three jobs that exist in significant numbers  
6 in the state or national economy which a person with the hypothetical limitations could  
7 perform adequately; including a packager, linen room attendant, and kitchen helper. AR at  
8 42-43; DOT (4th ed. 1991) § 318.687–010, 1991 WL 672755 (kitchen helper); *id.* §  
9 920.587–018, 1991 WL 687916 (hand packager); *id.* § 222.387-030, 1991 WL 672098  
10 (linen-room attendant). He classified each job as medium, unskilled labor with a Specific  
11 Vocational Preparation (“SVP”) rating of two. *Id.* When asked whether his testimony was  
12 consistent with the DOT, he answered in the affirmative. *Id.* at 43.

### 13 **B. The ALJ’s May 2, 2014 Decision**

14 The ALJ found Plaintiff had not engaged in substantial gainful activity since March  
15 29, 2012. *See* AR at 13. The ALJ also found that Plaintiff had severe impairments,  
16 including depression, anxiety, and schizophrenia, that caused work-related functional  
17 limitations. *Id.* However, after reviewing the medical evidence, the ALJ concluded that  
18 Plaintiff’s alleged dyslexia and palpitation disorders, as well as other physical complaints  
19 relating to joint pain and headaches, were not severe and would not be expected to interfere  
20 with Plaintiff’s ability to work. AR at 14. The ALJ determined that Plaintiff does not have  
21 an impairment or combination of impairments that meet, or are medically equal in severity  
22 to, one of the listed impairments in 20 CFR Part 404 Subpart P, Appendix 1. *See* AR at 14.  
23 After considering all the symptoms, in conjunction with the objective medical evidence,  
24 the ALJ found that Plaintiff had the residual functional capacity (“RFC”) to perform a full  
25 range of work at all exertional levels with the following nonexertional limitations:  
26 understand, remember and carry out simple job instructions only, and occasionally relate  
27 to, or deal with, co-workers, supervisors, and the public. AR at 15. Based on the vocational  
28 expert’s testimony and considering the Plaintiff’s age, education, work experience, and

1 RFC, the ALJ found that Plaintiff is capable of performing work that exists in significant  
2 numbers in the national economy. AR at 19. Those findings led the ALJ to the ultimate  
3 conclusion that Plaintiff is not disabled under section 1614(a)(3)(A) of the Social Security  
4 Act.

5 In making this determination, the ALJ relied on the range of Plaintiff's reported  
6 daily activities, notes reflecting successful control of Plaintiff's conditions with treatment  
7 and therapy, and the evidentiary record as a whole. AR at 17-18. The ALJ found that  
8 Plaintiff maintained a normal level of daily activity and interaction - including household  
9 chores, reading, crocheting, cooking, and caring for her mother, enrolling and excelling in  
10 GED math and English classes, and attending a behavioral health therapy program - all of  
11 which required a physical and mental capacity consistent with a significant degree of  
12 overall functioning. However, the ALJ also gave substantial weight to the state agency  
13 reviewing physicians' assessments that Plaintiff was limited to nonpublic simple repetitive  
14 tasks only. *Id.* at 17-18. *Id.*

## 15 **LEGAL STANDARD**

### 16 **I. Qualifying for Disability Benefits**

17 To qualify for disability benefits under the Act, an applicant must show that: (1) she  
18 suffers from a medically determinable impairment that can be expected to result in death  
19 or that has lasted, or can be expected to last, for a continuous period of not less than twelve  
20 months; and (2) the impairment renders the applicant incapable of performing the work  
21 that she previously performed or any other substantially gainful employment that exists in  
22 the national economy. *See* 42 U.S.C. § 423(d)(1)(A), 2(A). An applicant must meet both  
23 requirements to be found "disabled." *Id.*

24 The Secretary of the Social Security Administration has established a five-step  
25 sequential evaluation process for determining whether a person is disabled. *See* 20 C.F.R.  
26 §§ 404.1520, 416.920. During the fifth and final step of the process, it must be determined  
27 whether the claimant is able to perform work previously performed or any other  
28 employment that exists considering age, education, and work experience. *See* 20 C.F.R. §

1 404.1520(a)(4)(v). The claimant is entitled to disability benefits only if she is not able to  
2 perform any work. *See* 20 C.F.R. §§ 404.1520(g)(1). The Social Security Administration  
3 is “responsible for providing evidence that demonstrates that jobs exist in significant  
4 numbers in the national economy that [the claimant] can do, given [her] residual functional  
5 capacity and vocational factors.” *See* 20 C.F.R. § 404.1560(c)(2). To determine whether  
6 work is available, the ALJ may rely on the testimony of a vocational expert and/or the  
7 Dictionary of Occupational Titles (“DOT”) to evaluate whether the claimant can perform  
8 any work. *Terry v. Sullivan*, 903 F.2d 1273, 1276 (9th Cir. 1990) (citations omitted).

## 9 **II. Standard of Review**

10 Section 405(g) of the Act provides for judicial review of a Commissioner’s final  
11 agency decision. *See* 42 U.S.C. § 405(g). This Court reviews the Commissioner’s decision  
12 to determine whether the Commissioner’s findings are supported by substantial evidence  
13 and whether the proper legal standards were applied. *DeLorme v. Sullivan*, 924 F.2d 841,  
14 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than  
15 a preponderance. *Sandgathe v. Charter*, 108 F.3d 978, 980 (9th Cir. 1997) (citation  
16 omitted). “[I]t is such relevant evidence as a reasonable mind might accept as adequate to  
17 support a conclusion.” *Id.* (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.  
18 1995)). The reviewing court must consider the record as a whole, weighing both the  
19 evidence that supports and detracts from the Commissioner’s conclusions. *See Desrosiers*  
20 *v. Secretary of Health & Human Servs.*, 846 F.2d 573, 576 (9th Cir. 1988) (citing *Jones v.*  
21 *Heckler*, 760 F.2d 993, 995 (9th Cir. 1985)). If the evidence supports more than one rational  
22 interpretation, the Court must uphold the ALJ’s decision. *See Allen v. Heckler*, 749 F.2d  
23 577, 579 (9th Cir. 1984) (citing *Allen v. Secretary of Health and Human Servs.*, 726 F.2d  
24 1470, 1473 (9th Cir. 1984)). When the evidence is inconclusive, “questions of credibility  
25 and resolution of conflicts in the testimony are functions solely of the Secretary.” *Sample*  
26 *v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982).

27 However, even if the reviewing court finds that substantial evidence supports the  
28 ALJ’s conclusions, the Court must set aside the decision if the ALJ failed to apply the

proper legal standards in weighing the evidence and reaching a decision. *See Benitez v. Califano*, 573 F.2d 653, 655 (9th Cir. 1978). Section 405(g) permits a court to enter a judgment affirming, modifying, or reversing the Commissioner’s decision. *See* 42 U.S.C. § 405(g). The reviewing court may also remand the matter to the Social Security Administrator for further proceedings. *Id.* “If additional proceedings can remedy defects in the original administrative proceeding, a social security case should be remanded.” *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990) (*quoting Lewin v. Schweiker*, 654 F.2d 631, 635 (9th Cir. 1981)).

## **DISCUSSION**

### **I. The ALJ’s Step-Five Findings**

Plaintiff argues the ALJ failed to carry the Administration’s burden at step five of the sequential evaluation. Specifically, she contends the jobs identified by the ALJ require a GED Reasoning Level of 2 or 3, which are both inconsistent with Plaintiff’s RFC. Plaintiff contends that the occupations identified by the vocational expert and subsequently adopted by the ALJ are not within Plaintiff’s mental capacity to “understand, remember, and carry out *simple job instructions*....”

According to the Dictionary of Occupational Titles (“DOT”), the occupation of packager and kitchen helper require Level-2 reasoning, described as the application of “commonsense understanding to carry out *detailed but uninvolved* written or oral instructions” and the ability to “deal with problems involving a few concrete variables in or from standardized situations.” The job of linen-room attendant requires Level-3 reasoning, described by the DOT as the application of “commonsense understanding to carry out instructions furnished in written, oral, or diagrammatic form” with the ability to

1 “deal with problems involving several concrete variables in or from standardized  
2 situations.”<sup>2</sup>”

3 First the Court addresses whether “simple job instructions” may incorporate those  
4 instructions which are “detailed but uninvolved.” While some courts have recognized an  
5 inconsistency, other courts have reconciled the two descriptions. *See Clarendon v. Astrue*,  
6 No. ED CV 07-1520-E, 2008 WL 2561894, at \*2 (C.D. Cal. June 26, 2008) (recognizing  
7 a “possible inconsistency between a restriction to simple instructions and an aptitude  
8 sufficient to understand detailed but uninvolved instruction”); *but see Lara v. Astrue*, 305  
9 F. App'x 324, 326 (9th Cir. 2008) (holding that someone able to perform simple, repetitive  
10 tasks is capable of doing work requiring more rigor and sophistication—in other words,  
11 Reasoning Level 2 jobs); *see also Patton v. Astrue*, No. 6:11-CV-06423-ST, 2013 WL  
12 705909, at \*1 (D. Or. Feb. 25, 2013) (finding that although the instructions may be detailed,  
13 they may also be simple - consisting of multiple steps, none of which are complex).

14 Plaintiff argues that the Ninth Circuit decision in *Rounds v. Comm’r of Soc. Sec*  
15 *Admin.*, 807 F. 3d 996 (9th Cir. August 4, 2015) is controlling. In *Rounds*, the claimant’s  
16 RFC limited her to performing one-and two step tasks. The court found a close similarity  
17 between Level-1 reasoning, requiring “commonsense understanding to carry out simple  
18 one-or two-step instructions,” and *Rounds*’ RFC. The court concluded that “only tasks with  
19 more than one or two steps would require ‘detailed’ instructions.” *Rounds*, 807 F.3d. at  
20 1003.

21 Here, Plaintiffs RFC limits her to carrying out simple instructions, despite the  
22 number of steps ultimately required to complete the task. In determining Plaintiff’s RFC,  
23 the ALJ gave substantial weight to the assessment that Plaintiff is limited to nonpublic  
24 simple repetitive tasks. It seems plausible that Plaintiff could complete multi-step,  
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27 <sup>2</sup> Defendant suggests that the Court need not address whether the level-3 reasoning job of linen room  
28 attendant is within Plaintiff’s RFC because jobs as packager and kitchen-helper both exist in significant  
numbers.

1 repetitive tasks if each step is broken down into simple instructions. However, when  
2 comparing Plaintiff's RFC with the reasoning requirements at Level-1 and Level-2, the  
3 capacity to "understand, remember, and carry out simple job instructions" bares a closer  
4 resemblance with carrying out "one or two step instructions" than with carrying out  
5 "detailed but uninvolved" instructions. The evidence in the record does not address this  
6 potential conflict nor offer any reasonable explanation reconciling the apparent  
7 inconsistency between Plaintiff's RFC and the demands of Level -2 reasoning.

## 8 **II. Harmless Error Analysis**

9 On cross motion for summary judgment, Defendant argues that any failure to  
10 reconcile the potential conflict is harmless error. Defendant contends that regardless of  
11 any conflict between the ALJ's RFC finding and her conclusion that Plaintiff could perform  
12 work requiring Level-2 reasoning, the record supports the ALJ's step-five determination.  
13 The Commissioner points to evidence of Plaintiff's daily activities, the clinical findings,  
14 and medical-opinion evidence which establish that Plaintiff is capable of a "significant  
15 degree of overall mental functioning" consistent with the requirements of Level-2  
16 reasoning.

17 During the disability hearing, Plaintiff testified that she could not work due to side  
18 effects caused by her medication. Ultimately, the ALJ found the record was inconsistent  
19 with her testimony in this regard, however, neither Plaintiffs testimony, nor any other  
20 evidence in the record indicate that Plaintiff has difficulty with retaining information,  
21 completing assignments that have multiple steps, or performing tasks that require some  
22 basic attention to detail. The Court notes, despite Plaintiff's symptoms, her mental exams  
23 showed no deterioration in her functioning, her thought processes were goal oriented and  
24 logical, and most important, her memory was intact – all of which aid in carrying out  
25 detailed, but uninvolved instructions. The evidence also indicates that Plaintiff excelled in  
26 her math and English courses and possessed the wherewithal and functional capacity to act  
27 as a caregiver for her mother after surgery. Considering the record as a whole, weighing  
28 both the evidence that supports and detracts from the Commissioner's conclusions, the

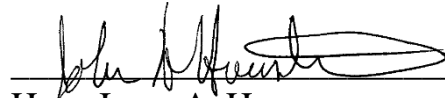


1 Court finds that substantial evidence in the record supports a rational interpretation that  
2 Plaintiff has the ability to perform jobs requiring Level-2 reasoning. Therefore, the ALJ's  
3 step-five finding must be upheld. *See Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984)  
4 (citing *Allen v. Secretary of Health and Human Servs.*, 726 F.2d 1470, 1473 (9th Cir.  
5 1984)). Because Level-2 reasoning jobs exist in significant numbers in the national  
6 economy, the Court need not opine on whether Level-3 reasoning jobs are within Plaintiff's  
7 RFC.

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9 **CONCLUSION AND ORDER**

10 For the reasons set forth above, **IT IS HEREBY ORDERED** Plaintiff's Motion for  
11 Summary Judgment is **DENIED** and Defendant's Cross-Motion for Summary Judgment  
12 is **GRANTED**. The Clerk of Court shall enter judgment accordingly.

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14 Dated: December 31, 2018

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17 HON. JOHN A. HOUSTON  
18 UNITED STATES DISTRICT JUDGE  
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